

Nos. 22-55988, 22-56036

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

AL OTRO LADO, INC., *et al.*,

Plaintiffs-Appellees/Cross-Appellants,

v.

ALEJANDRO MAYORKAS, Secretary of Homeland Security, *et al.*,

Defendants-Appellants/Cross-Appellees,

and

The EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Appellant/Cross-Appellee.

APPEAL FROM FINAL JUDGMENT OF THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

No. 17-cv-02366-BAS-KSC

MOTION TO EXTEND EN BANC BRIEFING DEADLINE

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Counsel for Plaintiffs-Appellees/Cross-Appellants

Pursuant to Ninth Circuit Rule 31-2.2(b), Plaintiffs-Appellees/Cross-Appellants (“Plaintiffs”) move for a 30-day extension of time to respond to the Court’s order directing the parties to file briefs regarding rehearing en banc. In support of this motion, Plaintiffs-Appellants state the following:¹

1. On Wednesday, January 8, 2025, this panel directed the parties to file simultaneous briefs setting forth their petitions on whether this case should be reheard en banc. The briefs are currently due January 29, 2025, which is 21 days from entry of that order.
2. Plaintiffs request a 30-day extension of time to file the briefs, up to and including February 28, 2025.
3. An extension is necessary because of a pending request for an indicative ruling in the district court, which may impact Plaintiffs’ position or arguments on rehearing en banc. On December 27, 2024, Plaintiffs filed a motion in the district court for relief from the judgment under Federal Rule of Civil Procedure 60(b). District Court ECF No. 842 (the “Rule 60(b) Motion”). The Rule 60(b) Motion explains that very few class members are currently seeking relief under the district court’s injunction, and that the purpose of the injunction has been satisfied and the injunction has achieved the equities it was intended to, such that continuing to enforce it is

¹ Attached to this motion is a declaration of Stephen Medlock, pursuant to Ninth Circuit Rule 31-2.2.

no longer equitable. The Rule 60(b) Motion seeks to relieve all parties of their obligations to identify new class members, and requests an indicative ruling because the trial court currently lacks jurisdiction to amend the injunction.

4. Defendants-Appellants/Cross-Appellees and Appellant/Cross-Appellee (the “Government”) have not yet taken a position on the Rule 60(b) Motion, and their response brief is currently due January 31, 2025. District Court ECF No. 844 (Jan. 10, 2025) (setting deadlines). The position that the Government takes on the Rule 60(b) Motion may impact whether this case meets the criteria for rehearing en banc. *See* Fed. R. App. P. 40(b). Thus, Plaintiffs request additional time for briefing in this Court so that they may address arguments related to the Government’s position on the Rule 60(b) Motion.

5. Plaintiffs have exercised diligence and the brief will be filed within the time requested.

6. Plaintiffs conferred with the Government, and the Government takes no position on Plaintiffs’ request, but if the Court extends the deadline, the Government requests it maintain the simultaneous briefing schedule.

7. Thus, Plaintiffs move this Court to extend the deadline for all parties to file their briefs regarding rehearing en banc for 30 days, up to and including February 28, 2025.

Dated: January 15, 2025

Respectfully submitted,

/s/ Stephen M. Medlock

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify that this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Times New Roman, a proportionally spaced font, and it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 433 words according to the count of Microsoft Word, and pursuant to 9th Circuit Rule 27-1(1)(d), contains 3 pages, excluding the documents excluded from the length limit under Fed. R. App. P. 27(a)(2)(B) and 32(f).

Signature /s/ Stephen M. Medlock **Date** 1/15/25

CERTIFICATE OF CONFERENCE

I certify that counsel for Plaintiffs conferred with counsel for the Government on January 15, 2025, who indicated that they take no position on Plaintiffs' request, but if the Court extends the deadline, the Government requests it maintain the simultaneous briefing schedule.

Signature /s/ Stephen M. Medlock **Date** 1/15/25